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SEP 21 2007

KANSAS DENTAL BOARD

BEFORE THE KANSAS DENTAL BOARD

In the Matter of)
)
HARRY J. KOURI, JR., D.D.S.)
Kansas License No. 5026)

Case No. 06-72

STIPULATION AND FINAL AGENCY ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Dental Board (the "Board") and Harry J. Kouri, Jr., D.D.S. (the "Respondent") as follows:

1. The Board is represented herein by its attorney, Randall J. Forbes of Frieden & Forbes, 555 South Kansas Avenue, Suite 303, Topeka, Kansas 66603. The Respondent is represented herein by his attorney, _____

2. The Board is the Kansas agency vested with the authority, pursuant to K.S.A. 74-1404 and K.S.A. 74-1406, to carry out and enforce the provisions of the Kansas Dental Law, K.S.A. 65-1401 *et seq.*, including conducting hearings and proceedings to revoke, suspend or otherwise discipline a Kansas license to practice dentistry.

3. The Respondent is presently entitled to engage in the practice of dentistry in the State of Kansas by reason of the Board having issued him Kansas license number 5026. At all times relevant hereto, the Respondent has held a current license to engage in the practice of dentistry in the State of Kansas.

4. The Board has received certain information, has investigated and has determined that there are reasonable grounds to believe that the Respondent has committed an act or acts in violation of the Kansas Dental Act, K.S.A. 65-1401 *et seq.*

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5. Respondent hereby admits and waives any further proof in this or any other proceeding before or initiated by the Board that:

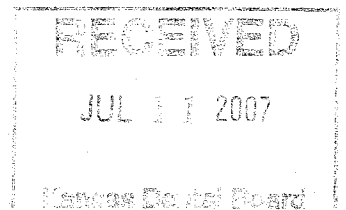
A. On or about July 20, 2001, the Board received two reports from the National Practitioner Data Bank concerning two separate settlements based on Respondent's root canal treatments of two different patients, Patient M.F. and Patient S.R. The Board subsequently opened Case 1657-01 and Case 1657-01b, and performed an investigation. On or about August 5, 2002, Respondent voluntarily entered into a Consent Agreement with the Board by which he agreed to refrain from performing endodontic procedures in the future.

B. On or about July 12, 2006, the Board received a complaint regarding Respondent's treatment of Patient M.M. and subsequently opened the above-captioned matter, Case 06-72. The Board's investigation revealed the following:

1. On or about June 6, 2006, Patient M.M. presented to Respondent for a routine dental check-up and cleaning. During the check-up, Respondent took an x-ray, which revealed a large area of deep decay near the pulp on tooth #18. Notwithstanding the x-ray, Respondent diagnosed a distal chip on tooth #18 and scheduled Patient M.M. for a filling.

2. On or about June 26, 2006, Patient M.M. returned to Respondent's office for the filling of tooth #18. Respondent informed Patient M.M. that the filling would be small and did not require a local anesthetic. During the procedure, Patient M.M. suffered pain from the drilling and raised her hand in order to notify the Respondent of the pain. Respondent continued with the procedure and filled Patient M.M.'s tooth #18.

3. On or about June 28, 2006, during an adjustment to the filling in tooth #18, Respondent cut Patient M.M.'s tongue with a drill, which caused Patient M.M. to suffer pain. As a result, Patient M.M. sought a second opinion from another dentist, who



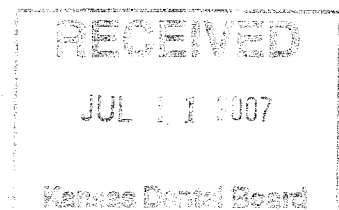
referred the patient to an endodontist. The endodontist subsequently performed a root canal on tooth #18.

C. Due to Respondent's prior cases with the Board, the August 5, 2002 Consent Order limiting Respondent from performing endodontic procedures, and Respondent's treatment of Patient M.M., the Board's Investigative Member requested that a Board inspector perform a record review and sanitation inspection at Respondent's office.

D. On or about January 19, 2007, a Board inspector performed a record review to determine the standard of care in Respondent's practice with regard to his diagnosis and patient care. During a review of twenty-one records, which were selected at random, the Board inspector found that fifteen records lacked periodontal charting and adequate radiographs and five records had other deficiencies.

E. A review of the record for Patient M.M. revealed that on or about June 6, 2006, Respondent took two bitewing x-rays, which reflected the presence of deep caries on the distal of tooth #18 and potential concerns on the existing MOD composite of tooth #13. Because both bitewings had proximal overlap, the contact between tooth #15 and tooth #16 was not diagnostic and there was no image of tooth #21. When the patient returned on or about June 26, 2006, the record only states, "#18 DO-alloy, no anesthetic." When the patient returned on or about June 28, 2006, the record only states, "adj. occlusion."

F. A review of a panoramic x-ray in Patient T.C.'s record revealed the presence of four impacted wisdom teeth. The Respondent failed to treat the teeth and advised the patient to use extra-strength Tylenol. In addition, the Respondent failed to refer the patient to an oral surgeon and failed to enter a diagnosis in the patient's record.



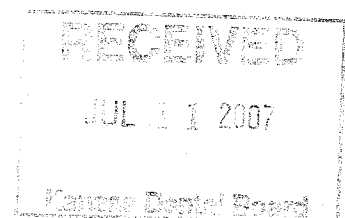
G. A review of the record for Patient G.C. revealed that in January 2003, the Respondent recommended root canal treatment for tooth #4. When Patient G.C. returned to Respondent in April 2004, Respondent noted that the patient had root canal therapy on teeth #4 and #5, but the canals were incompletely filled. The Respondent then failed to record which dentist performed the root canals or the status of the root canal fills. When the Patient returned in December 2005, a full crown was fabricated for tooth #19, but the record does not show a radiograph of the tooth since December 2002.

H. A review of the record for Patient W.A. revealed that the patient presented on or about May 2, 2006, with a sore tooth #19. An x-ray revealed a periapical lesion, but Respondent performed a bite adjustment. On or about May 8, 2006, the bite was adjusted, but the record has no other comments. On or about September 11, 2006, the bite was adjusted with one comment to remove the old filling if the bite adjustment did not work. On or about September 13, 2006, the record only indicates that tooth #19 was extracted.

I. A review of the record for Patient T.P. revealed the lack of periodontal charting and the lack of a full mouth set of radiographs.

J. Under the circumstances of this case, the Respondent's failure to properly diagnose the deep decay on Patient M.M.'s tooth #18 and treatment of Patient M.M. without a local anesthetic, which caused pain to Patient M.M., constitute deviations from the applicable standard of care.

K. Under the circumstances of this case, the Respondent failed to maintain adequate records and radiographs.



The Board finds and concludes that the aforesaid conduct is grounds for disciplinary action in the State of Kansas pursuant to K.S.A. 65-1436(b) and K.S.A. 65-1436(a)(3), as defined by K.S.A. 65-1436(c)(2).

6. The Board finds and the Respondent agrees that the following disposition is just and appropriate under the circumstances:

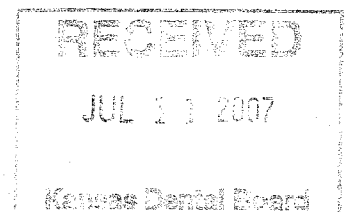
A. ADMINISTRATIVE FINE. Respondent hereby agrees and consents to the Board entering an order requiring him to pay to the Board, within ten (10) days of the effective date to the Final Agency Order contemplated hereby, an administrative fine in the amount of Five Hundred Dollars (\$500).

B. CONTINUING DENTAL EDUCATION. Respondent hereby agrees and consents to the Board entering an order requiring him, within six (6) months of the effective date to the Final Agency Order contemplated hereby, to obtain eight (8) hours of dental education on the topic of periodontics, and eight (8) hours of dental education on the topics of diagnosis and record-keeping, all in addition to any continuing education necessary to renew his Kansas dental license.

C. OTHER REQUIREMENTS. Respondent acknowledges and agrees that as a condition of this Stipulation and Final Agency Order he must:

1. Comply fully with this Stipulation and Final Agency Order; and
2. Comply fully with the Kansas Dental Act, the Board's rules and regulations and all state and federal laws relating to Kansas dentists.

7. Respondent agrees that all information in the possession of the Board's Investigation Member, its staff, its investigators and its attorney regarding the investigation which led to this disciplinary action and all information discovered during the pendency of the



disciplinary action may be disclosed to and considered by the Board as part of the presentation and consideration of the proposal of settlement in the form of this Stipulation and Final Agency Order and the Final Order provided for herein, with or without the presence of the Respondent or his attorney. In the event that this Stipulation and Final Agency Order and the Final Order provided for herein are not accepted and approved by the Board, the Respondent further waives any objection to the Board members' consideration of this Stipulation and Final Agency Order or the information mentioned in the preceding sentence and further agrees to waive any claim of due process violation or the right to seek the disqualification of any Board member as a result of the Board member's consideration of said document and information.

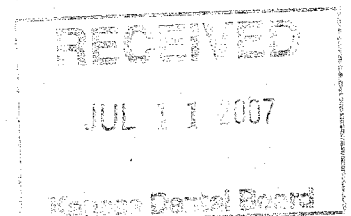
8. The stipulations contained herein shall not become binding until this Stipulation and Final Agency Action is approved by the Board and the Final Order provided for herein is entered by the Board. The Respondent acknowledges that the approval of the Board's attorney shall not constitute the approval of the Board or bind the Board to approve this Stipulation and Final Agency Action or the Final Order provided for herein.

9. The Respondent agrees that this Stipulation and Final Agency Order is in conformance with Kansas and federal law and the Board has jurisdiction to enter into it and enter the Final Order provided for herein. The Respondent further agrees that the Kansas Dental Act, K.S.A. 65-1421 *et seq.*, is constitutional on its face and as applied in this case.

10. This stipulation constitutes the entire agreement of the parties and may only be modified by a subsequent writing signed by them. The agreement shall be interpreted in accordance with the laws of the State of Kansas.

11. The Respondent acknowledges that he has the following rights:

A. To have formal notice of charges served upon him;



B. To file a response to the charges;

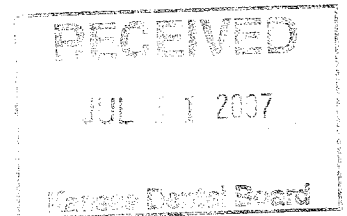
C. To have notice of and participate in a formal adjudicative hearing with the Board making specific findings of facts and conclusions of law based only upon evidence admitted at such hearing; and

D. To take advantage of all applicable provisions of the Kansas Administrative Procedures Act and the Act for Judicial Review and Civil Enforcement of Agency Action.

The Respondent freely waives these rights and acknowledges that said waiver is made voluntarily and in consideration of the Board's limiting the disciplinary action taken against him to those provided for herein. The Respondent further waives the right to seek reconsideration or appeal or otherwise contest this Stipulation and Final Agency Order and the Final Order provided for herein.

12. The Respondent acknowledges that he enters into this Stipulation and Final Agency Order freely and voluntarily after consultation with counsel of his choosing. The Respondent further acknowledges that he has read this Stipulation and Final Agency order in its entirety, that he understands its legal consequences and that he agrees that none of its terms are unconscionable, arbitrary or capricious.

13. Time is of the essence to this Stipulation and Final Agency Order. Respondent acknowledges and agrees that any violation of this Stipulation and Final Agency Order shall constitute a willful violation of a lawful Board order and grounds for further disciplinary action against him. The pendency of any disciplinary action arising out of an alleged violation of this Stipulation and Final Agency Order shall not affect the obligation of Respondent to comply with all terms and conditions of this Stipulation and Final Agency Order.



14. This Stipulation and Final Agency Order constitutes the entire and final agreement of the parties. In the event any provision of this Stipulation and Final Agency Order is deemed invalid or unenforceable by a court of competent jurisdiction, it shall be severed and the remaining provisions of this Stipulation and Final Agency Order shall be given full force and effect.

15. Upon execution by all parties, this Stipulation and Final Agency Order shall be a public record in the custody of the Board.

16. This Stipulation and Final Agency Order shall become effective on the day it is approved, accepted and made an order of the Board by way of signature of the Board's authorized representative.

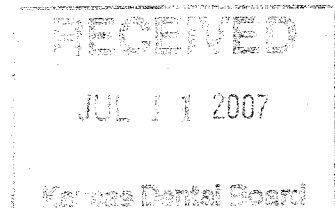
17. For purposes of reporting to the National Practitioner's Data Bank, this matter shall be categorized as follows:

A. Adverse Action Classification: "1173 Publicly Available Fine/Monetary Penalty."

B. Adverse Action Classification: "1199 Other Licensure Action – Not Classified, Mandatory Continuing Education Courses."

C. Basis For Action: "13 Negligence."

18. The Respondent acknowledges that he has been advised by the Board that he would have the right within 15 days after service of the Final Order provided for herein to file a petition for reconsideration with the Board and the right within 30 days after service of the Final Order provided for herein to file a petition for judicial review in the District Court of Shawnee County, Kansas in accordance with the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 *et seq.*, and to serve such a petition for judicial review on the



Kansas Dental Board by serving Betty Wright, its Executive Director, at 900 SW Jackson, Room 564-S, Topeka, KS 66612. The Respondent hereby waives those rights.

AGREED AND ACCEPTED BY:

Harry J. Kourz, Jr., D.D.S.
Harry J. Kourz, Jr., D.D.S.

6-27-07
Date

Robert Henson, D.D.S.
Investigation Member

Date

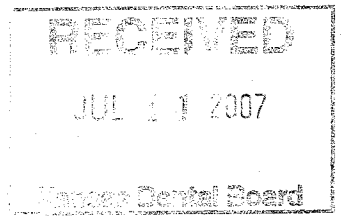
APPROVED BY:

Respondent's Attorney's Name & Address

Date

Randall J. Forbes
Randall J. Forbes, #09089
FRIEDEN & FORBES
555 S. Kansas Avenue, Suite 303
Topeka, KS 66603
(785) 232-7266

7.6.07
Date



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KANSAS DENTAL BOARD

BEFORE THE KANSAS DENTAL BOARD

In the Matter of)
)
HARRY J. KOURI, JR., D.D.S.)
Kansas License No. 5026)

Case No. 06-72

FINAL ORDER

Upon motion duly made, seconded and passed, the Kansas Dental Board (the "Board") approves and accepts the within Stipulation and Final Agency Order and incorporates the provisions thereof as the Final Order of the Board.

On or about July 20, 2001, the Board received two reports from the National Practitioner Data Bank concerning two separate settlements based on Respondent's root canal treatments of two different patients, Patient M.F. and Patient S.R. The Board subsequently opened Case 1657-01 and Case 1657-01b, and performed an investigation. On or about August 5, 2002, Respondent voluntarily entered into a Consent Agreement with the Board by which he agreed to refrain from performing endodontic procedures in the future.

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1. On or about June 6, 2006, Patient M.M. presented to Respondent for a routine dental check-up and cleaning. During the check-up, Respondent took an x-ray, which revealed a large area of deep decay near the pulp on tooth #18. Notwithstanding the x-ray, Respondent diagnosed a distal chip on tooth #18 and scheduled Patient M.M. for a filling.

2. On or about June 26, 2006, Patient M.M. returned to Respondent's office for the filling of tooth #18. Respondent informed Patient M.M. that the filling would be small

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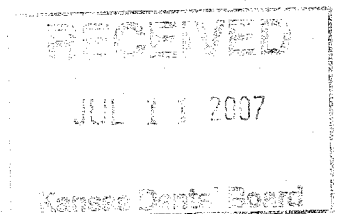
and did not require a local anesthetic. During the procedure, Patient M.M. suffered pain from the drilling and raised her hand in order to notify the Respondent of the pain. Respondent continued with the procedure and filled Patient M.M.'s tooth #18.

3. On or about June 28, 2006, during an adjustment to the filling in tooth #18, Respondent cut Patient M.M.'s tongue with a drill, which caused Patient M.M. to suffer pain. As a result, Patient M.M. sought a second opinion from another dentist, who referred the patient to an endodontist. The endodontist subsequently performed a root canal on tooth #18.

Due to Respondent's prior cases with the Board, the August 5, 2002 Consent Order limiting Respondent from performing endodontic procedures, and Respondent's treatment of Patient M.M., the Board's Investigative Member requested that a Board inspector perform a record review and sanitation inspection at Respondent's office.

On or about January 19, 2007, a Board inspector performed a record review to determine the standard of care in Respondent's practice with regard to his diagnosis and patient care. During a review of twenty-one records, which were selected at random, the Board inspector found that fifteen records lacked periodontal charting and adequate radiographs and five records had other deficiencies.

A review of the record for Patient M.M. revealed that on or about June 6, 2006, Respondent took two bitewing x-rays, which reflected the presence of deep caries on the distal of tooth #18 and potential concerns on the existing MOD composite of tooth #13. Because both bitewings had proximal overlap, the contact between tooth #15 and tooth #16 was not diagnostic and there was no image of tooth #21. When the patient returned on or about June 26, 2006, the record only states, "#18 DO-alloy, no anesthetic." When the patient returned on or about June 28, 2006, the record only states, "adj. occlusion."



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A review of the record for Patient T.P. revealed the lack of periodontal charting and the lack of a full mouth set of radiographs.

Under the circumstances of this case, the Respondent's failure to properly diagnose the deep decay on Patient M.M.'s tooth #18 and treatment of Patient M.M. without a local anesthetic, which caused pain to Patient M.M., constitute deviations from the applicable standard

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of care. Under the circumstances of this case, the Respondent failed to maintain adequate records and radiographs.

The Board finds and concludes that the aforesaid conduct justifies disciplinary action against Respondent's Kansas dental license pursuant to K.S.A. 65-1436(b) and K.S.A. 65-1436(a)(3), as defined by K.S.A. 65-1436(c)(2).

The Board further finds and concludes that the following disposition is just and appropriate under the circumstances:

A. ADMINISTRATIVE FINE. Within ten (10) days of the effective date to the Final Agency Order contemplated hereby, Respondent shall pay to the Board an administrative fine in the amount of Five Hundred Dollars (\$500).

B. CONTINUING DENTAL EDUCATION. Respondent is hereby ordered, within six (6) months of the effective date to the Final Agency Order contemplated hereby, to obtain eight (8) hours of dental education on the topic of periodontics, and eight (8) hours of dental education on the topics of diagnosis and record-keeping, all in addition to any continuing education necessary to renew his Kansas dental license.

C. OTHER REQUIREMENTS. The Board further orders the Respondent to:

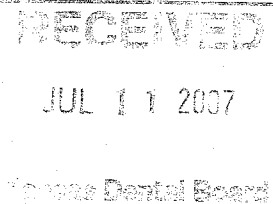
1. Comply fully with this Stipulation and Final Agency Order; and
2. Comply fully with the Kansas Dental Act, the Board's rules and regulations and all state and federal laws relating to Kansas dentists.

ENTERED AND EFFECTIVE this 21st day of September, 2007.

KANSAS DENTAL BOARD

By:

Richard T. Darnall
Richard Darnall, D.D.S.
President

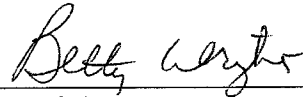


CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing STIPULATION AND FINAL AGENCY ORDER was served upon counsel by depositing same in the United States mail, postage prepaid, this 26th day of September, 2007, addressed to:

Randall J. Forbes
FRIEDEN & FORBES
555 S. Kansas Avenue, Suite 303
Topeka, KS 66603

Harry J. Kouri, Jr., D.D.S.
6611 E. Central
Wichita, KS 67206



Betty Wright
Executive Director
KANSAS DENTAL BOARD

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Kansas Dental Board